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Supreme Court of the United States

October Term, 1963
No. 209

JOSEPH LYLE STONER,

Petitioner,

vs.

THE PEOPLE OF THE STATE OF CALIFORNIA.

On Writ of Certiorari to the District Court of Appeal of
California, Second Appellate District.

Brief Amicus Curiae of the American Civil Liberties
Union of Southern California.

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Interest of Amicus Curiae.

The American Civil Liberties Union of Southern California is submitting this brief with the consent of both parties filed herewith with the Clerk of this Court. Amicus is a nonpartisan organization dedicated to the preservation of American Constitutional Civil Liberties. Its interest in the present case arises from its belief that the rights guaranteed by the Fourth and Fourteenth Amendment against unreasonable search and seizure have been breached.

Statement.

On October 25, 1960, the Budget Town Food Market in Monrovia, California, was robbed by a man holding a gun, wearing horn-rimmed glasses and a gray coat or jacket. [R. 16, 21, 22, 25, 29, 30.]

Sometime shortly after the robbery, a checkbook identified as belonging to someone with a name similar to defendant's was found in the parking lot of the grocery store by a Mrs. Franklin which was turned over to the investigating officers who used this to locate the residence of defendant in the Mayfair Hotel in Pomona. [R. 69, 70.] The officers also ascertained that a man with that name (Joey L. Stoner) had been previously convicted of felonies. [R. 70.]

On October 27, investigating officers went to the Mayfair Hotel in Pomona without a search or an arrest warrant. [R. 67.]

They approached the night clerk and asked him if there was a party by the name of Joey L. Stoner, living in the hotel. [R. 71.] The clerk checked his records, said yes, gave them the room number, but stated that the occupant was out of his room at that time. [R. 71.] They asked the night clerk if he would give them permission to enter the room, and told the clerk that they were there to make an arrest of a man who had possibly committed a robbery, and they were concerned about the fact that he had a weapon. The night clerk took them to petitioner's room, unlocked the door, and invited them to enter. [R. 71, 72.]

They entered the room, seized a pair of horn-rimmed glasses, systematically searched the room, including the

bureau drawers, and located a gray jacket, a gun, cartridges and clip. [R. 72, 73.]

The investigating officers *then* determined that this petitioner was their suspect [R. 74], and observed or stayed in the room until approximately noon of the following day, October 28th. [R. 74.]

Petitioner was arrested in Las Vegas, Nevada, on October 29, 1960, and brought to California. [R. 79.] Upon being interrogated in California, he was confronted with the gun which had been seized [R. 93, 94] and made a statement at that time which, if true, admitted that he had committed the robbery. [R. 94.]

Upon the trial, the gun, the glasses, the jacket or coat, the cartridges and the clip were received in evidence over petitioner's objection that they were seized as the result of an unlawful search and seizure. [R. 75.]

Summary of Argument.

The search of petitioner's room in his absence constituted an illegal search and seizure in violation of the Fourth and Fourteenth Amendments.

State police officers must meet constitutional standards in their searches and seizures and evidence obtained through an illegal search and seizure is inadmissible.

ARGUMENT.

I.

The Search of Petitioner's Room in His Absence Was Without His Consent, Without a Search Warrant, Cannot Be Considered as a Search Incident to His Arrest, and Is Therefore an Illegal Search and Seizure.

A.

The record is absolutely clear that the search of petitioner's room was made without a warrant of any kind. [R. 67.]

Equally clear, we believe, is that the consent of the hotel clerk cannot be substituted for the consent of the tenant of the room. *Chapman v. United States*, 365 U. S. 610; *Johnson v. United States*, 333 U. S. 10; *Mosco v. United States*, 301 F. 2d 180 (C. A. 9, 1962).

B.

Not in question also, is the proposition that a man's home cannot be searched without a search warrant except as an incident to a lawful arrest therein. Had Stoner first been arrested in Las Vegas, Nevada, and then his room in Pomona, California, searched, such a search would have been illegal. *Harris v. United States*, 331 U. S. 145; *Gould v. United States*, 255 U. S. 298; *Agnello v. United States*, 269 U. S. 20; *Page v. United States*, 282 F. 2d 807 (C. A. 8, 1960).

Appropriate here is the language in the *Agnello* case which discussed the situation where an arrest was made in one place followed by a search a few blocks away.

"The right without a search warrant contemporaneously to search persons lawfully arrested

while committing crime, and to search the place where the arrest is made in order to find and seize things connected with the crime as its fruits, or as the means by which it was committed, as well as weapons and other things to effect an escape from custody is not to be doubted. . . . The legality, of the arrests, or of the searches and seizures made at the home of Alba, is not questioned. Such searches and seizures naturally and usually appertain to and attend such arrests. But the right does not extend to other places. Frank Agnello's house was several blocks distant from Alba's house, where the arrest was made. When it was entered and searched, the conspiracy was ended and the defendants were under arrest and in custody elsewhere. That search cannot be sustained as an incident of the arrest." (269 U. S. at 30-31).

C.

The only support for this search and seizure rests upon the circular California proposition that a search may precede an arrest because the search and the arrest are considered as one transaction, and the search is then considered to be an incident to the arrest.

To say that an arrest 36 hours after the search in another state relates back to the time of the search itself, is to invalidate the meaning of time itself and to strain the order of things. This is equivalent to calling a prologue an epilogue. We think this tortures the "same transaction" phrase and drags the search into legality by the hair.

The Federal Courts have considered this California proposition on at least two other occasions and found

it each time to violate the Fourth and Fourteenth Amendments.

The Ninth Circuit Court of Appeals considered this exact question on almost identical facts in *Mosco v. United States*, 301 F. 2d 180 (1962). The police officers went to Mosco's apartment to arrest him. They knocked on the door, received no answer, looked through a window and did not see him, so they entered the apartment with the aid and consent of the landlord and searched the premises. A half hour later, Mosco appeared at the apartment and was then arrested. In discussing this situation, the Court stated (p. 187):

"The exception which permits a search to be made without a warrant, if incident to a lawful arrest, is based upon necessity. Arresting officers must be able to protect themselves, to deprive prisoners of potential means of escape, and to avoid destruction of evidence by the arrested person. . . .

This rule of necessity obviously has no application if the arrest has not been made and cannot be made. No search under these circumstances could be made for the purpose of protecting officers and making an arrest, depriving an arrested person of potential means of escape, or avoiding destruction of evidence by the arrested person.

It follows that a search made prior to an arrest and at a time when the officers were physically unable to make an arrest cannot be regarded as 'incident' to an arrest, within the meaning of the rule. . . .

If it turned out that Mosco was arrested somewhere else, or arrested at his apartment the following week, it could not have been said

that the search which uncovered Exhibit C was incident to the arrest. This being true, it seems clear that the officers were without authority at the time of the search, but seek to cloak the search with purported authority which, as a matter of pure coincidence, attached later when Mosco reappeared at his apartment."

Hurst v. California, 211 F. Supp. 387 (ND Cal. 1962), dealt squarely with the problem of a search which preceded the arrest of people who were then in the house. That case held that Constitutional law on search and seizure requires (p. 392):

"that an arrest be made *prior* (emphasis not supplied) to any search of a defendant or of the area under his possession or control, in order that such search be considered as incident to the arrest (cases cited). The California rule, on the other hand, appears to sanction searches as incident to arrest, even if the search occurs prior to the actual arrest, as long as there was, in fact, probable cause to have made an arrest prior to the making of the search. (Citations.) The logic and language of *Mapp* and *Elkins, supra*, do not, in my opinion, permit the continuation of this California rule. Although the California Courts have reached an opposite conclusion (citations), I find it impossible to rationalize the use of two conflicting types of search incident to an arrest, . . . I see no legal basis for permitting a search, as incidental to an arrest, to precede that arrest, no matter how appealing the practicalities of the situation might appear."

D.

Some mention is appropriate here concerning the exploratory nature of the search of Stoner's room. In *Boyd v. United States*, 116 U. S. 616, this Court reviewed the history, leading to the adoption of the Fourth Amendment and to the vices of the General Warrant. In the concurring opinion in that case it was also pointed out that (20 L. ed. at 755):

"It is only unreasonable searches and seizures that are forbidden, and the means of securing this protection was by abolishing searches under warrants, which were called general warrants, because they authorized searches in any place, for anything. This was forbidden, while searches founded on affidavits, and made under warrants which described the thing to be searched for, the person and place to be searched, are still permitted."

General searches were again condemned in *United States v. Lefkowitz*, 285 U. S. 452, in *Gouled v. United States*, 255 U. S. 298, in *Agnello v. United States*, 269 U. S. 20, and in *Go-Bart Importing Company v. United States*, 282 U. S. 344.

As these cases are applied to the instant facts, it seems clear that the search for and seizure of the glasses, which in turn led to the search for and seizure of the jacket and gun cannot be sustained. As this Court has repeatedly pointed out (*e.g. Harris v. United States*, 331 U. S. 145, 154; *United States v. Rabinowitz*, 339 U. S. 56, 64, f.n. 6; *Lefkowitz* (*supra*, pp. 464, 666); *Gouled* (*supra*, pp. 309-311)) the glasses and jacket were merely evidentiary materials which may not be seized nor taken into custody, even under the authority of a search warrant or during the course of a search incident to an arrest.

II.

State Police Officers Must Meet Constitutional Standards in Their Searches and Seizures, and Evidence Obtained Through an Illegal Search and Seizure Is Inadmissible in State Courts.

This proposition is no longer open to question. *Mapp v. Ohio*, 367 U. S. 643; *Ker v. California*, 374 U. S. 23.

We think it appropriate here to mention something about the significance of the seizure of these objects and the conviction of petitioner. The officers, when interrogating petitioner after his arrest, confronted him with this gun, at which time he made his admission of guilt. The witnesses, Mr. Greeley and Mrs. Ray, devoted substantial testimony to identification of the glasses, the jacket or coat, and the gun which were seized in petitioner's room. [E.g. R. 17, 26, 29, 30, 61.] It thus appears that the entire proceedings against petitioner are tainted with the illegal search and seizure. Therefore the evidence must be excluded and the conviction reversed. *Silverthorne Lumber Co. v. United States*, 251 U. S. 385, 392; *Wong Sun v. United States*, 371 U. S. 471, 484-487.

Conclusion.

In our view, if one's home may be searched in one's absence, without a search warrant, with or without probable cause for one's arrest, then much of the Fourth Amendment of the Constitution becomes almost meaningless. When we attempt to squeeze the search and the arrest together in one package and label it as the same transaction, then we play fast and loose with our Constitutional rights and erode them

for all citizens for the sake of convicting one. We think this price is too high.

Because of this we urge the Court to hold that the evidence obtained here is evidence obtained through an unconstitutional search and seizure; as such, it is inadmissible; and, therefore, the conviction of this petitioner must be set aside.

Respectfully submitted,

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